

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15946 of N Street Village Inc., pursuant to 11 DCMR 3108.1, for a special exception under Paragraph 513.1(d) and Subsection 358.7 for a substance abusers' home and to allow more than one community-based residential facility within a square or within 500 feet of another community-based residential facility to establish a substance abusers' home of 12 women on the second through fourth floors in an SP-2 District at premises 1329 N Street, NW, (Square 242, Lot 93).

Application No. 15956 of N Street Village, Inc., as amended, pursuant to 11 DCMR 3108.1, for a special exception under Paragraph 513.1(d), and Subsection 358.7 for a substance abusers' home and to allow more than one community-based residential facility within a square or within 500 feet of another community-based residential facility to establish a substance abusers' home of 12 women on the second through fourth floors in an SP-2 District at premises 1333 N Street, NW (Square 242, Lot 93).

Application No. 15957 of N Street Village, Inc., as amended, pursuant to 11 DCMR 3108.1, for a special exception under Paragraph 513.1(a) and Subsection 358.7 to establish a community residence facility and to allow more than one community-based residential facility within a square or within 500 feet of another community-based residential facility to establish a community residence facility for nine mentally retarded residents on the second through fourth floors in an SP-2 District at premises 1331 N Street, NW (Square 242, Lot 93).

Application Nos. 15947 and 15958 of the Memorial Evangelical Lutheran Church, pursuant to 11 DCMR 3108.1, for a special exception under Paragraph 513.1(c) and Subsections 358.7 and 358.8 to allow an emergency shelter of more than 25 persons and to allow a community-based residential facility within 500 feet of another community-based residential facility to establish a shelter of 37 beds for homeless women on the third and fourth floors of a church building in an SP-2 District at premises 1226 Vermont Avenue, NW (Square 244, Lot 803).

HEARING DATES: September 21 and 28, 1994
DECISION DATE: November 2, 1994

ORDER

PRELIMINARY MATTERS:

Three preliminary matters were raised. The first was procedural and sought to consolidate all five cases into one hearing. The Board ruled that the applicant had one program with constituent parts (represented by the various applications), and that each part needed to be approved. In order

to eliminate repetitious testimony about each program, the Board consolidated the cases into one hearing. Additionally, prior to the public hearing, staff consolidated Applications Nos. 15947 and 15958.

With reference to the second preliminary matter, staff indicated that the Board had no jurisdiction over the community residence facility identified in Application No. 15957 because it houses ten or less persons and was therefore permitted as a matter-of-right in the SP District. The Board ruled that Application No. 15957 was not a part of the record; however, later determined that testimony should be heard on the application.

The third preliminary matter concerned whether one of the applications [the emergency shelter] was properly before the Board, or if it needed a variance as opposed to a special exception. The Board ruled that based on the Regulations, Application No. 15947/15958 would be heard under the zoning requirements governing special exceptions, not use variances.

SUMMARY OF EVIDENCE:

1. The site is located in the Northwest quadrant of the District of Columbia in the Thomas Circle neighborhood of Ward 2. The boundaries of the subject Squares 242 and 244 are 14th Street to the west, Vermont Avenue to the east, M Street/Massachusetts Avenue to the south, and Rhode Island Avenue to the north. The addresses of the premises are 1329, 1331 and 1333 N Street, and 1226 Vermont Avenue. The site is located in the Logan Circle/Greater 14th Street Historic District.
2. The N Street properties are located on Lot 93 of Square 242. Lot 93 was created by subdividing and consolidating several lots. Lot 93 comprises 21,438.40 square feet of land area and is improved with five rowhouses and a surface parking lot. The lot has a 155.92-foot frontage along N Street to the south, a 93.42-foot frontage along Vermont Avenue to the west, and 130-foot frontage along 14th Street to the east. A 10-foot wide public alley abuts the site to the northeast.
3. The Vermont Avenue property is located on Lot 803 of Square 244 which is a triangularly shaped and comprises 14,584 square feet of land area. It is developed with a four-story plus basement church structure that houses the Memorial Evangelical Lutheran Church (also referred to as Luther Place). The church building is historic landmark, which is listed in the D.C Inventory of Historic Sites and the National Register of Historic Places.
4. The site is located in a transitional area. It is situated one block to the north of the Central Business District (CBD), and approximately one-half block to the south of the Logan Circle residential neighborhood. The area to the south is densely developed with commercial uses. In addition, a mix of uses that include high-rise office, hotel, retail, service, and residential buildings characterizes the area surrounding the site. In contrast, the area to the north contains predominantly residential development. The Logan Circle neighborhood is characterized by three and four-story Victorian row houses, mid-rise apartment buildings, and single-family detached dwelling units.
5. In September 1993, the Zoning Administrator determined that two of the subject buildings would require certificates of occupancy (Cs of O) as substance abusers' homes. The applicant had Cs of O to use the buildings as rooming and boarding houses. The basis for the Zoning

Administrator's decision was twofold: (1) the buildings' occupants were being given special guidance and counseling; and, (2) the Fair Housing Amendments Act does not exempt a person or organization from having the required certificate of occupancy. The Department of Consumer and Regulatory Affairs (DCRA) informed the applicant that compliance with zoning requirements was necessary and that action should be taken to file with the Board of Zoning Adjustment for zoning relief, or have the buildings conform with the current Cs of O. Failure to do either would result in enforcement action. In October 1993, citations were issued by DCRA to the applicant for not having the proper certificates of occupancy to operate the community-based residential facilities (CBRFs).

6. The applications concern five components of an existing, unified program for single, adult homeless women that Luther Place operates in proximity to each other. The programs are an emergency overnight shelter and permanent residential programs in the building that houses the church sanctuary on Vermont Avenue. Within close proximity, on the north side of N Street, are several adjoining rowhouses that provide housing for more extended periods of time. The applicant described each application and the programs offered as follows:

- a. The premises which is the subject of Application No. 15947/15958 is located at 1226 Vermont Avenue, NW. The premises include the church's parish building, and the application concerns the use of the third and fourth floors as an emergency overnight shelter for up to 37 homeless women. The program is known as "Luther Place Night Shelter".
- b. The premises which is the subject of Application No. 15956 is located at 1333 N Street, NW. The building is a four-story rowhouse that is used to provide transitional housing for eight homeless women who are awaiting inpatient substance abuse treatment. The program is known as "Harriet Tubman House".
- c. The premises which is the subject of Application No. 15946 is located at 1329 N Street, NW. The building is a four-story rowhouse used to provide transitional housing for up to 12 homeless women who are recovering from addictions to drugs or alcohol. The program is known as "Sarah House".
- d. The premises which is the subject of Application No. 15957 is located at 1331 N Street, NW. The building is a four-story rowhouse that is used to provide permanent residential housing for nine previously homeless women with mental health disabilities. The program is known as "Raoul Wallenberg House".

7. The applicant indicated that all of the programs constitute one interrelated program based on a "continuum of care" model which the Memorial Evangelical Lutheran Church has used since 1986. Luther Place first began using the term "continuum of care"; thereafter, the Interagency Council on Homelessness and the Department of Housing and Urban Development embraced the concept as a national solution to homelessness. The programs provide services to homeless women, as well as long-term recovery programs and permanent housing to help women move permanently out of homelessness. Homeless women who come to the shelter as a result of domestic violence or unemployment are referred, as quickly as possible, to other programs that

specifically deal with those issues. The applicant provided a detailed description of the programs offered.

Luther Place Night Shelter

The facility provides 24-hour services to women recovering from illnesses, some of which are related to drug and alcohol addiction. Ninety-one percent of the women are mentally ill. The night shelter provides beds for up to 31 women on the fourth floor, with additional six beds on the third floor. Luther Place opens each day in the evenings at 4:00 p.m. and closes each morning at 7:30 a.m.

The shelter is staffed by eight full and three-part time employees, three full-time interns and, throughout the year, hundreds of volunteers. One full-time employee, with the assistance of a volunteer, oversees the facility during the nighttime and its closing in the mornings.

Prospective shelter residents sign an agreement to observe the rules of the shelter, which include prohibitions on violence, weapons, drugs, and alcohol. Prospective residents must also take a tuberculosis-screening test. Once admitted to the shelter, residents are guaranteed a bed as long as they follow the rules and work with shelter staff in locating permanent housing. In 1993, the average length of stay for all residents was three months. Residents of the shelter do not loiter around the building during the day because they go to Bethany Women's Center.

Bethany Women's Center is located in the basement of the church (the same building where the shelter is housed). Bethany Women's Center is a day program that does intake for the shelter, as well as for Luther Place continuum of care services. Specifically, the center conducts intake interviews and keeps track of the waiting list for entry into the night shelter. The Bethany Center opens at 7:30 a.m. when the shelter closes. It provides services until 4:00 p.m., when the shelter reopens.

Harriet Tubman House and Sarah House

The Harriet Tubman House is the first stage of the N Street recovery program. The Tubman house provides transitional housing for eight homeless women who are recovering from drug or alcohol addiction and awaiting inpatient substance abuse treatment. Residents of the Harriet Tubman House stay an average of 48 days, and 92 percent successfully complete the program. The Tubman House operates daily from 2:00 p.m. to 7:30 a.m.

Sarah House provides transitional housing for up to 12 homeless women who have completed the inpatient substance abuse program at the Harriet Tubman House. Residents who stay at the Sarah House are in the second stage of the recovery program. The average length of stay at the Sarah House is eight months. Sarah House operates daily from 1:00 p.m. to 9:00 a.m.

Residents of the Harriet Tubman House and Sarah House, during the daytime, attend meetings of Alcoholics Anonymous or Narcotics Anonymous, go to appointments, and participate in activities at Bethany Women's Center. The residents of both houses sign an agreement to observe rules, which prohibit violence, weapons, drugs, alcohol and interaction with men.

The Harriet Tubman House and the Sarah House employ six full and one part-time employees, a staff of seven. Additionally, approximately 50 trained volunteers provide special services and overnight supervision.

Raoul Wallenberg House

The Raoul Wallenberg House is the final stage in the continuum of helping women avoid a return to homelessness. It provides housing for up to eight elderly, formally homeless women with mental health disabilities. The women choose to live in the facility. Referrals come from the night shelter. Openings to the house are rare; no new women have been admitted since 1992. At the time of the hearing, all of the current residents, except for one, had lived in the house since 1988. The facility is open to residents' 24-hours daily, and is staffed by one full and one part-time employee, and a live-in house manager.

8. The applicant indicated that the CBRFs do not have a negative impact on the surrounding neighborhoods because of trash, deliveries, parking and traffic, the close proximity of the facilities to each other and security for the following reasons:

Trash: The grounds of the subject buildings are kept clean of debris. Trash is removed from two locations three to four times weekly, and an exterminator visits the facilities bi-monthly. The grounds are cleaned by paid staff each morning. In addition, a resident of the Wallenberg House works as a volunteer, picking up trash in the surrounding area.

Deliveries: No deliveries are made to the townhouses - N Street Village; the residents and staff purchase all necessary items from the grocery store. Deliveries to the night shelter occur during normal business hours. Paper goods and cleaning supplies are delivered approximately six times a month. Food and groceries are delivered once a week by trucks.

Parking and Traffic: The properties are located within the Greater 14th Street Historic District and is exempt from any on-site parking requirements. There are 40 parking spaces provided for staff and volunteers in a parking lot that is located across the street. Curb parking is available during the daytime in the neighborhood. There is an ample supply of parking garages in the area. The programs' participants do not own automobiles, and they seldom have visitors. Traffic conditions around the site are relatively good considering the site's downtown setting.

Close Proximity of the Facilities to Each Other: The clustering of the programs helps them to function more effectively and is a necessary ingredient for their success. The geographic proximity allows for sharing of staff expertise and economizing of program costs; allows residents to have access to the services that are needed without having to

travel long distances; allows intermingling among the women, those in the more advanced stages of the program can serve as a conduit to those just entering the shelter; and, encourages a sense of community which is essential to building self-esteem and developing independence among homeless people.

There is not an over-concentration of community-based residential facilities (CBRFs) in the Logan Circle neighborhood. Within the boundaries of Ward 2, there are no other substance abuse facilities and only one other emergency shelter for women. Several homeless shelters in the area have closed in recent years, and the remaining ones consistently operate at full capacity. Based on the applicant's analysis of all of the existing CBRF's that are located within the boundaries of the Logan Circle Community Association, the facilities account for 8.7 percent of the total shelter beds in the city.

Security: The night shelter is secure. The N Street entrance is locked and monitored by a closed circuit camera system. Visitors are announced. Adequate staff is always present and staff is trained in emergency and crisis intervention techniques. Loitering is discouraged, and the police are called whenever loiters drink alcohol or appear intoxicated. Residents are not permitted to have male visitors at any time. The residents in all of the homes assist in the security of the area by reporting suspicious activities and strangers to the staff. The applicant cooperates and works in concert with the police to keep the area safe.

9. The executive director and deputy director of the Community Partnership for the Prevention of Homelessness presented testimony in support of the applications. The witnesses stated that the Partnership is charged with the responsibility of preventing homelessness in the city, and is the designated implementing entity for the D.C. Homeless Initiative - a new \$20 million program.

10. The D.C. Initiative is a partnership between the U.S. Department of Housing and Urban Development, the District of Columbia government and the Community Partnership that is charged with the responsibility of taking over the management of the existing shelter system in the city. The witnesses were qualified as experts in the delivery of homeless services within the District of Columbia. They stated the following:

- a. The necessity of providing a continuum of care, rather than simply focusing on an emergency-based shelter system is essential in addressing the problems of homelessness in the city. The continuum concept addresses the underlying causes of homelessness, which involves more than just providing physical shelter. The concept requires incorporating a wide range of interrelated issues. It is the lack of such a citywide coordinated effort that is the heart of some of the problems being experienced by the existing system for delivering services to the homeless.
- b. Many of the homeless women that are served by Luther Place have had long connections to the neighborhood; they are not simply transients. In addition, because homeless people are not permanently housed does not mean that they do not form neighborhood attachments.

- c. Removing the services that Luther Place provides would not make the people go away. The presence of the programs and their comprehensive nature mean that you do not have people literally living and hanging out on the streets.
- d. There are approximately 7,500 homeless people on any given day in the city; 5,000 of which are either in public or private shelters. Of those, 2,500 are on the city's streets. Approximately 20 percent or 500 of these people are women. The city has only 200 publicly funded beds especially for women; however, there is a need to expand the number of beds in the system by approximately 150. If the facilities at Luther Place were closed, there would be a loss of 65 beds for the women (37 at the overnight shelter), in addition to all of the services that they provide. The city is in a position where it cannot afford to lose even one of the beds.
- e. There are two categories of homeless women in the city. The women who have been homeless for long periods of time are characterized by having chronic disabilities: mental illness, substance abuse, and sometimes a physical handicap. The other groups of women who are homeless are oftentimes in that situation because of chronic poverty. Generally, this condition is short-term. If services are available for women who are homeless because of poverty, such as those that are provided by Luther Place shelter, these women can be helped in a relatively short period of time.

11. The site is located in an SP-2 District which permits matter-of-right, medium-high density development including all kinds of residential uses with limited offices for non-profit organizations, trade associations, and professionals permitted as a special exception requiring approval of the Board of Zoning (BZA), to a maximum height of 90 feet, a maximum floor area ratio (FAR) of 6.0 for residential and 3.5 for other permitted uses, and a maximum lot occupancy of 80 percent for residential uses.

The Zoning Administrator determined that the applicant was unable to meet the applicable zoning requirements for the location of substance abusers' homes, a community residence facility, and an emergency shelter to be located in the SP-2 District without the approval of the Board of Zoning Adjustment.

12. The Office of Planning (OP), by memoranda dated September 12 and 14, 1994 recommended approval of the applications. The Office of Planning indicated that the applicant had met the burden of proof to establish the requested facilities because they would not create adverse impacts on adjacent properties, nor would they adversely affect the surrounding neighborhood because of traffic, noise, and other objectionable conditions. Further, OP stated that the use and operation of the proposed facilities would not impair the intent, purpose and integrity of the Zoning Regulations and Map. The reasons for the Office of Planning's recommendation were:

- o The homeless shelter, the substance abusers' homes and community residence facility have operated for nearly 20 years without apparent negative impacts on the community;

- o The relief sought by the applicant would not change the scope and intensity of the activities and services provided by the facilities;
- o The parking needs of the facilities are adequately provided for - a parking area that can accommodate 40 vehicles is located across the street;
- o The church is listed on the National Register of Historic Places and exempt from the parking requirements because its grounds cannot be altered to create parking;
- o The night shelter's operation is conducted in conjunction with the programs at N Street Village and the separation of the CBRFs is geographic rather than programmatic and administrative; and,
- o Other than the subject community-based residential facilities, there are no other CBRFs located within a 500-foot radius of the site or within Squares 242 and 244.

13. The Department of Fire and Emergency Medical Services submitted correspondence dated April 11 and September 1, 1994 stating that it evaluated the request to determine the applications' impact on emergency operations. The department had no objection and stated that fire and life safety features required by city codes would be reviewed during the building permit review process.

14. The Metropolitan Police Department by correspondence dated April 7, 1994 stated that it does not appear that the project would affect the public safety in the immediate area or generate an increase in the level of police services being provided. The department was not opposed to approval of the applications.

15. The Department of Human Services by correspondence dated September 9, 1994 indicated that the programs offered by Luther Place have been able to move many homeless mentally ill women into permanent housing. The loss of these programs would result in more chronic street people in the neighborhood, without provisions for the necessary psychiatric services that would allow them to return to a higher level of functioning. In an effort to reduce the number of the homeless mentally ill on the streets of the city, the department supports the continuation of the subject programs.

16. The Department of Public Works (DPW), by memorandum dated September 15, 1994 stated that short-term parking is allowed on the streets that surround the site -- that is N Street, Vermont Avenue and 14th Street. Metrobus service is available on 14th Street. [Metrorail stations that are located within walking distance of the site are Shaw/Howard University, McPherson Square and Dupont Circle.] Luther Place Church owns and operates a parking lot that contains approximately 40 parking spaces. Therefore, DPW anticipated that the parking lot would meet the parking needs of the staff because all of the employees live in the District of Columbia and most in the immediate neighborhood. DPW stated that the facilities would not have any measurable effect on the neighborhood transportation system and therefore recommended approval of the applications.

17. City Councilmember Hilda M. Mason by correspondence dated September 14, 1994 urged the Board to support the applications. The At-Large Councilmember indicated that after visiting the houses and observing the programs and services offered to the women, that the facilities are a resource vital to the people of the District of Columbia. The Councilmember further stated that the church has provided care for women, which the District government cannot provide and has done so over the years with no detrimental effect to the neighborhood.

18. The record contains an overwhelming number of letters, petitions and verbal arguments in support of and in opposition to the applications. There was significant discord among the area's residents concerning the benefits versus the liabilities of the community-based residential facilities. Organizations such as the Interfaith Conference of Metropolitan Washington, the Council of Churches of Greater Washington, and the Washington Legal Clinic for the Homeless, jointly, submitted a brief in support of the applications. Thirteen persons testified in support of the applications. Approximately 550 letters of support were received from community residents and people throughout the city and the Washington Metropolitan Area. Many social service agencies and church-related institutions, such as the Archdiocese of Washington wrote to support the applications. A typical supporting letter reads, in part, as follows:

I am writing to show my strong support to grant the necessary approvals so that Luther Place Memorial Church may continue to offer the important and effective continuum of services it has provided for so long. To deny Luther Place the right to continue to provide the effective services that have long offered refuge and life-saving rehabilitation to the homeless women living there would be not only a devastating decision for them, but would prove to be detrimental to the surrounding neighborhoods as well. The Luther Place ministry has served the community for over two decades and is one of the best programs available in assisting to solve the problem of homelessness. People living at N Street Village are not just warehoused. These people become clean and sober, receive counseling, learn skills, and many are able to re-enter the greater society as contributing citizens. The programs offered by Luther Place are what should be available on a government-wide basis.

19. Advisory Neighborhood Commission (ANC) 2F by correspondence dated September 12, 1994 voted to oppose the applications. [The vote was three members to approve and one to oppose. Four members constitute a quorum.] The Logan Circle Advisory Neighborhood Commission at its September 8, 1994 public meeting disapproved of the applications based on the following:

- o Luther Place Memorial Church has left its parking lot unsecured, parked dumpsters in public space, illegally used mobile houses in the area;
- o In the period since Luther Place Memorial Church was fined by the Administrative Law Judge; it has expanded the number of beds in the emergency shelter from 31 to 38. The maximum allowed as a special exception in the SP zone is 20;

- o Two substance abusers' homes (1329 and 1333 N Street) have a total of 24 persons, they exceed the 20-person maximum allowed as a special exception in the same square and lot in the SP district;
- o Luther Place Memorial Church has not demonstrated that it meets the legal requirements for variance relief under 11 DCMR Subsection 3107.2; and
- o Luther Place Memorial Church has not met the requirement of 11 DCMR Subsection 358.5 for special exception for a CRF at Raoul Wallenberg House (1331 N Street), the application is for a CRF for mentally retarded persons, when in fact the current residents are mentally ill.

20. Fifteen persons testified in opposition and many others present at the public hearing were opposed to the applications. In addition, approximately 21 letters opposing the community-based residential facilities were filed with the Board.

21. The Logan Circle Community Association (LCCA) was represented by counsel and strongly opposed the applications. The community organization requested and was granted party status by the Board. The LCCA outlined the history of community-based residential facilities in the city by presenting detailed background information. It was stated that halfway houses were the precursors to CBRFs. Halfway houses operated as rooming houses and were issued certificates-of-occupancy by the Zoning Administrator, prior to the requirements in the Zoning Regulations stipulating that the Board must approve these facilities. Council for the LCCA indicated that there were three important aspects of the legislative history of CBRFs that appear to be at odds with the continuum of care approach. The opposition indicated that based on the legislative history of CBRFs, the following were important considerations when the Zoning Commission deliberated the requirements for CBRFs:

- a. The facilities should be dispersed as equally as possible around the entire District of Columbia. No single area should contain a disproportionate share of community-based residential facilities; the CBRFs should not be highly concentrated in any one area, thus adversely impacting the community.
- b. Smaller institutional facilities, those having characteristics in size of families, should be encouraged to lessen the impact, increase compatibility, and provide alternatives to institutional settings.
- c. The needs and desires of three segments of the community must be balanced -- the occupants of the facilities who use the services; the operators of the facilities who provide the services; and the residents of the surrounding neighborhood who may be affected by the services.

22. The LCCA presented six witnesses in opposition to the application. The witnesses testified that the church had not been a good neighbor, and was lax in working with the neighborhood organizations and individual citizens in resolving problems created by the CBRFs.

23. A former board member and officer of the LCCA stated that the Logan Circle neighborhood has had a long history of embracing programs that provide affordable housing and appropriate community service facilities for low- and moderate-income persons. However, the issues created by Luther Place deal with over-concentration of service facilities for dependent people; the large increase in the number of people to be served by Luther Place; noncompliance with code requirements associated with the facilities (the applicant was fined in this regard); the applicant's long history of defiance of the laws that govern the social service programs that it operates; and, poor management, maintenance of the N Street properties (e.g., trash removal). These have been contentious areas of disagreement between the applicant and the community. The witness stated that a balance must be struck between the services offered by facilities such as Luther Place, and the health and welfare of the neighborhoods in which they are located.

24. A resident of the neighborhood testified that the people living in the CBRFs have had deleterious impacts on the Logan Circle neighborhood. The resident stated that his main objection to the applicant's proposal is the granting of zoning relief that would allow services to be increased at the site. The resident testified that the women are asked to leave the shelter early in the morning, and they have nothing to do and nowhere to go. The witness stated that residents of the shelter get intoxicated, have sex, defecate, change clothing, and discard dirty clothing in the alley in the rear of his property.

25. A business owner and neighborhood resident reiterated testimony presented to the Board concerning residents of the shelter drinking, loitering and thrashing the neighborhood. In addition, she stated that panhandling in the vicinity of the site was a continual problem and that the sights, sounds, and odors that result from people panhandling in the neighborhood are disruptive to the neighborhood. The resident stated that other social service facilities in the Logan Circle area have worked cooperatively with neighborhood organizations in resolving neighborhood concerns; residents have been able to reach common ground with the other facilities, whereas the attitudes and behavior of the applicant have been in contrast. In addition, the applicant has operated the facilities in flagrant disregard for the laws of the District of Columbia.

26. An expert on the building permit process in the District of Columbia testified that the proposed facility did not meet all applicable code and licensing requirements as required by Subsection 358.5 of the Zoning Regulations. Specifically, the testimony indicated that no evidence was submitted into the record that the facilities comply with District of Columbia code requirements pertaining to health care medicine for the mentally ill, and fire code requirements. The witness testified that the applicant has obtained a construction permit to tear down one of the buildings on the site and construct an eight-story apartment building in its place.

The witness submitted 152 form letters in opposition to the applications. Also, it was stated that the city had not secured approval of the community-based residential facilities from the appropriate historic preservation review agencies since the buildings are located in a historic district and the church is listed on the National Register of Historic Preservation.

27. An expert in land use planning discussed the neighborhood where the facilities are located; the importance of the SP District in that it creates a buffer between high-density commercial development to the south and low-density residential neighborhoods to the north; and, provided

background on the Zoning Commission's Order dealing with deinstitutionalization. The planner testified that the project is inconsistent with the Zoning Regulations, the Ward 2 Plan, and the Comprehensive Plan. It was stated that over-concentration would result from placing too many CBRFs in close proximity, thus creating negative impacts on the Logan Circle neighborhood.

The planning expert indicated that the applications do not meet the zoning requirements for the following reasons:

- o Spacing requirements were established by the Zoning Commission to provide that community-based residential facilities are not located within 500 feet of each other, or within the same square, unless the Board finds that the cumulative effect of these facilities would not have an adverse impact on the neighborhood because of traffic, noise, or operations. The Logan Circle area contains an over-concentration of CBRFs and service facilities within proximity of each other.
- o Over-concentration of CBRFs has had adverse impact on the Logan Circle neighborhood, which is already fragile because of problems associated with illegal on-street activities and its attendant street crime. When an entire block or most of it is used for institutional use, with a transient population, it does not provide for the same level of crime deterrent, as does a block of residents who have a stake in the area.
- o The 14th Street corridor clearly contains an over-concentration of congregate living arrangements and service facilities. Within or immediately abutting the 13 squares of the overlay district south of U Street, there are nine legal CBRFs, nine service facilities, and nine illegal CBRFs or similar facilities. In addition, there are five proposed projects, which are service centers, boarding/rooming houses, or CBRFs.
- o The adverse impacts created by the shelter are exacerbated by the lack of adequate security measures instituted by the shelter. The emergency shelter is an attractive nuisance because it attracts persons who loiter outside the facilities and harass passersby. It attracts people who relieve themselves and sleep on the grounds of the church. Emergency shelters generally do not contribute to the creation of an atmosphere that is conducive to a healthy neighborhood.
- o There is no need for the Wallenberg House to be located at the site because it has a stable resident population and operates independently from the other facilities. Although a comprehensive approach to addressing the problems of homelessness is preferable, the continuum of care concept can be achieved through referrals to other providers or locations.
- o The applicant failed to establish that there is no reasonable alternative to meeting its program needs of that area of the District of Columbia. The Evergreen Apartment building (an underutilized, eight-story, multi-purpose facility that houses five programs, including a licensed community residence facility) is located close to the site and could be used for some of the services provided by the applicant.

- o The District government cannot afford to lose any more of its population that resides on the outskirts of the Central Business District. The importance of promoting stability in these near-in neighborhoods cannot be over-estimated. The people living on the outskirts of CBD assist in promoting a living, vibrant and healthy downtown.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The applications are precedence-setting in that a ruling on the continuum of care concept (the crux of the applicant's case) is the first time the Board has had to make a decision on the merits of this concept. The applicant presented justifiable reasons to approve the applications (for properties adjacent to and within close proximity to each other). The Board was persuaded by the applicant's argument that the programs are interrelated and interdependent.
2. The church provides housing and services for homeless adult women to assist them in moving from homelessness and helplessness to independence. The programs have evolved from infancy into the continuum of care concept, and have been in existence for 20 years. Most of the residents who expressed ill feelings toward the applications did not want the programs abolished. They were opposed to the expansion of the existing services and wanted the applicant to be more responsive to the community's concerns.
3. The programs offered at the site operate as components to one larger unified program. They are interrelated. The geographic proximity of the programs is essential to the successful operation of each component as well as to the success of the whole.
4. The size of the facilities is small. Twelve women would be housed in each of the two substance abusers' homes, nine in the community residence facility and 37 in the overnight shelter. A total of 70 women would be accommodated at the site at one time.
5. The applicant is not seeking the Board's approval to establish, increase, or drastically alter the programs; rather, approval is sought to continue the existing programs that are offered.
6. There is a dire need in the District of Columbia for the services that are provided by the applicant. The applications were submitted to the District of Columbia Office of Planning, Department of Public Works, Department of Fire and Emergency Medical Services, Police Department, and Department of Human Services. All of these agencies have submitted documentation that supports the applications.
7. The applicant provides quality care to the people who are served. Extensive testimony indicates that the applicant operates facilities that are well managed, clean, and properly staffed.
8. The cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations. There is no **significant** adverse impact directly attributable to the facilities. Traditionally, the Logan and Dupont Circle neighborhoods have been areas where homeless people congregate. [These neighborhoods are on the outskirts of the CBD.] Homeless

people are going to be in these neighborhoods irrespective of whether social services are there for them. The services provided by the applicant are assisting to improve the plight of the people who are in the Logan Circle neighborhood.

9. Based on the evidence presented, the Board was not persuaded that Luther Place was the source of most of the problems in the general vicinity of the site. Pre-dating the establishment of services by Luther Place, the neighborhood experienced problems with drugs and prostitution.

10. The applicant has taken proper precautions to secure its facilities. Men and women sleep on the exterior of the church as a place of rest and comfort from the city's streets. Churches are places of refuge. Not all of these people are associated with Luther Place shelter and its other facilities. Loitering is discouraged and the police are called to the site when people are disruptive and if there are problems associated with alcohol.

11. The site is located in the Greater 14th Street Historic District and the church building is a designated historic landmark. The applicant did not propose any alterations to the structures and therefore review by the District of Columbia Historic Preservation Review Board was not required. The applicant's proposal concerns programs, no new construction was proposed.

12. Primarily visitors, employees and volunteers would generate automobile traffic to the site. Generally, people who are homeless do not own cars. The applicant indicated that a 40-space parking lot is located close to the site and it would be used by the church to accommodate the parking needs of the facilities. The Department of Public Works indicated that short-term parking is allowed on the streets that surround the site and that Metrobus service is available. Three Metrorail stations are located within walking distance of the site. The facilities are not likely to have an adverse impact on the Logan Circle neighborhood as a result of vehicular traffic.

13. The facilities, cumulatively, would not have adverse impacts on the Logan Circle neighborhood. The city has three categories of CBRFs. The categories of similar facilities are: Class A - youth residential care home, community residence facility, health care facility; Class B - emergency shelter; Class C - youth rehabilitation home, adult rehabilitation home, substance abusers home. Class A facilities would have the least impact, Class B facilities would have the most impact, and Class C facilities would be mid-range.

14. Sarah House and Harriet Tubman House (Application Nos. 15946 and 15956) are substance abusers' homes and are classified as similar facilities. The Raoul Wallenberg House (Application No. 15957) is a community residence facility and is another type of CBRF. Luther Place Night Shelter (Application Nos. 15947 and 15958) is the third category of CBRF. Not all of the facilities that are located at the site are similar.

15. With appropriate safeguards (conditions) in place, the community-based residential facilities would be able to continue to operate from the site without negatively impacting the Logan Circle neighborhood.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and evidence of record, the Board concludes that the applicant is seeking special exceptions under Paragraph 513.1 (a), (c) and (d), and Subsections 358.7 and 358.8 of the Zoning Regulations to establish two substance abusers' homes, a community residence facility and an emergency shelter for 70 women at the site. The special exceptions must meet the criteria set forth in Subsection 3108.1 of the Zoning Regulations which requires that the applications be in harmony with the general purpose and intent of the Zoning Regulations and Map and not tend to adversely affect the use of neighboring properties.

The Board concludes that the applicant has met the burden of proof, and as conditioned below, the proposed community-based residential facilities will not cause objectionable impacts because of parking, traffic, noise, operations, and number of similar facilities in the area. The Board finds that a smaller size shelter at the site cannot achieve the program goals and objectives of the District of Columbia and that there is no other reasonable alternative to meeting the program needs of the District of Columbia.

The Board concludes that the applicant's use of the property to house community-based residential facilities and the SP (Special Purpose) zoning of the site is not inconsistent. The special exceptions requested are in harmony with the general purpose, intent and integrity of the Zoning Regulations and Map, and as conditioned by this order, will not have adverse effects on the surrounding properties and the Logan Circle neighborhood.

The Board concludes that ANC 2F was accorded the "great weight" to which it is entitled.

It is hereby **ORDERED** that the applications be **GRANTED, SUBJECT** to the following **CONDITIONS**:

Application No. 15946

1. Approval shall be for a period of **THREE** years.
2. The premises shall be maintained in good repair and free of refuse and debris. All landscaping shall be maintained in a neat and orderly appearance and in a healthy growing condition.
3. The applicant shall provide community residents with the name and telephone number of a contact person who can address any problems or concerns regarding the operation of the facility on a 24-hour basis.
4. The applicant shall establish a community liaison program which shall conduct meetings between representatives of the facility, the ANC, and area residents and property owners at least four times a year. Notice of the meetings shall be given to the ANC and the owners of all property within 200 feet of the site. The applicant shall be responsible for keeping minutes of all meetings and providing quarterly reports of its activities. The applicant shall file copies of all minutes and quarterly

reports with the Board at the time of filing an application for continuance of the special exception relief.

VOTE: 5-0 (Craig Ellis, Susan Morgan Hinton, Laura M. Richards, John G. Parsons and Angel F. Clarens to grant)

Application No. 15956

1. Approval shall be for a period of **THREE** years.
2. The premises shall be maintained in good repair and free of refuse and debris. All landscaping shall be maintained in a neat and orderly appearance and in a healthy growing condition.
3. The applicant shall provide community residents with the name and telephone number of a contact person who can address any problems or concerns regarding the operation of the facility on a 24-hour basis.
4. The applicant shall establish a community liaison program which shall conduct meetings between representatives of the facility, the ANC, and area residents and property owners at least four times a year. Notice of the meetings shall be given to the ANC and the owners of all property within 200 feet of the site. The applicant shall be responsible for keeping minutes of all meetings and providing quarterly reports of its activities. The applicant shall file copies of all minutes and quarterly reports with the Board at the time of filing an application for continuance of the special exception relief.

VOTE: 4-1 (John G. Parsons, Craig Ellis, Susan Morgan Hinton and Angel F. Clarens to grant; Laura M. Richards opposed to the motion)

Application No. 15957

1. Approval shall be for a period of **THREE** years.
2. The premises shall be maintained in good repair and free of refuse and debris. All landscaping shall be maintained in a neat and orderly appearance and in a healthy growing condition.
3. The applicant shall provide community residents with the name and telephone number of a contact person who can address any problems or concerns regarding the operation of the facility on a 24-hour basis.
4. The applicant shall establish a community liaison program which shall conduct meetings between representatives of the facility, the ANC, and area residents and property owners at least four times a year. Notice of the meetings shall be given to the ANC and the owners of all property within 200 feet of the site. The applicant

shall be responsible for keeping minutes of all meetings and providing quarterly reports of its activities. The applicant shall file copies of all minutes and quarterly reports with the Board at the time of filing an application for continuance of the special exception relief.

VOTE: **5 - 0** (Craig Ellis, John G. Parsons, Laura M. Richards, Susan Morgan Hinton and Angel F. Clarens to grant)

Application Nos. 15947 and 15958

1. Approval shall be for a period of **THREE** years.
2. The premises shall be maintained in good repair and free of refuse and debris. All landscaping shall be maintained in a neat and orderly appearance and in a healthy growing condition.
3. The applicant shall provide community residents with the name and telephone number of a contact person who can address any problems or concerns regarding the operation of the facility on a 24-hour basis.
4. The applicant shall establish a community liaison program which shall conduct meetings between representatives of the facility, the ANC, and area residents and property owners at least four times a year. Notice of the meetings shall be given to the ANC and the owners of all property within 200 feet of the site. The applicant shall be responsible for keeping minutes of all meetings and providing quarterly reports of its activities. The applicant shall file copies of all minutes and quarterly reports with the Board at the time of filing an application for continuance of the special exception relief.

VOTE: **3-2** (Craig Ellis, Susan Morgan Hinton and Angel F. Clarens to grant; Laura M. Richards and John G. Parsons opposed to the motion)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: _____

MAR 31 1998

PURSUANT TO D.C. CODE SEC. I-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ORD 15946 ET AL./BAB